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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 350 (KBF)

5 LEVAN MAKASHVILI,

6 Sentence

7 Defendant.

8 -----x

9 New York, N.Y.  
10 August 24, 2018  
11 12:30 p.m.

12 Before:

13 HON. KATHERINE B. FORREST,

14 District Judge

15 APPEARANCES

16 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

17 ANDREW M. THOMAS

ANDREW ADAMS

Assistant United States Attorneys

18 XAVIER R. DONALDSON

Attorney for Defendant

20 ALSO PRESENT: LASHA GEGECHKORI, Interpreter (Georgian)

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(Case called)

MR. THOMAS: Good afternoon. Andrew Thomas and Andrew Adams, for the United States.

THE COURT: All right. Good afternoon, both of you.

MR. DONALDSON: Your Honor, Xavier R. Donaldson, for Mr. Makashvili. Good afternoon.

Good afternoon, government.

THE COURT: Good afternoon, Mr. Donaldson.

The Court notes Mr. Makashvili is here and present. Good afternoon, sir.

All right. I see that the defendant is wearing the equipment that allows him to hear the interpreter. If at any point in time you cannot hear the interpretation, just let me know or let Mr. Donaldson know, but if you don't say anything that indicates that you don't hear, we'll assume that you're able to hear everything. All right?

THE DEFENDANT: (In English) Yes.

THE COURT: All right. Thank you.

I apologize for keeping you folks waiting. We had a little miscommunication in chambers about whether this was going to be at 1:00 or at noon. I was downstairs, not knowing I should have been upstairs. So it's my fault, and so I apologize for that.

Let me start by setting forth for you folks the materials that we have in connection with this proceeding, and

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1 we'll take it from there.

2 The crime of conviction is traveling in interstate and  
3 foreign commerce with the intent to promote, manage, establish,  
4 carry on, and facilitate a business enterprise involving  
5 gambling. And there is a maximum five-year term of  
6 imprisonment that could be imposed on any individual convicted  
7 of that crime.

8 I've received in connection with this proceeding also  
9 a defense submission that is dated August 19, 2018. It was  
10 filed the next day, but is signed August 19.

11 I have also received in connection with this  
12 proceeding a presentence investigation report that is revised  
13 as of July 25, 2018.

14 And then separately and what gave rise, in part, to my  
15 order of yesterday was I received on August 21 from Pretrial  
16 Services notification that the defendant has violated the terms  
17 of his bail, at least purportedly, and had been arrested on  
18 July -- I'm sorry, August 12, and then notified -- he notified  
19 pretrial the next day on August 13 that he'd been arrested. As  
20 I understand it, the arrest was for a couple of things. But in  
21 part, he was stopped for a traffic violation, and it turned out  
22 he was both driving with a suspended license and also there was  
23 a stolen, or at least purportedly stolen, license plate on the  
24 vehicle he was in. I don't take the report as indicating that  
25 the vehicle was stolen but that the plate was stolen. So I

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1 have this report also.

2 As I understand it, based upon an email to chambers, I  
3 believe everybody has received a copy of this report. If  
4 people have not, then I'm happy to hand around the copy that I  
5 have. Otherwise, I'll assume you're all aware of it.

6 I have not received in connection with this sentencing  
7 any submission from the government, and so I wanted to first  
8 confirm, Mr. Thomas, that's correct?

9 MR. THOMAS: That's correct, your Honor. Yesterday  
10 the government filed a letter indicating that it would not be  
11 filing a formal submission in this case.

12 THE COURT: All right. Is there anything else that  
13 you folks think I should have?

14 MR. DONALDSON: No, your Honor.

15 Yes, we did receive the Pretrial Services memorandum,  
16 I believe the same time the Court did. I think I did.

17 THE COURT: OK.

18 MR. DONALDSON: 22nd -- 23rd.

19 THE COURT: All right. So we've all got, then, the  
20 same set of materials.

21 MR. DONALDSON: Yes.

22 THE COURT: Mr. Donaldson, have you had an opportunity  
23 to review the PSR with your client?

24 MR. DONALDSON: Yes, I have, your Honor.

25 THE COURT: Do you or your client have any objections

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1 to or modifications that need to be made to the PSR?

2 MR. DONALDSON: None except we did -- and I spoke to  
3 the government about this again this morning -- in our  
4 submission to the Court, we did put regarding the security  
5 aspect of the allegation itself, I believe the report says he  
6 acted as muscle, or something to that effect. Again, I haven't  
7 talked to the government about this for quite some time over  
8 the last year or 14 months. We didn't like the word "muscle,"  
9 that he was portrayed as being the muscle or one of the muscle  
10 for Mr. Shulaya, so I just wanted to make that kind of passive,  
11 call it passive, objection.

12 We do note and acknowledge, as I told the government,  
13 that he was present on several occasions when Mr. Shulaya was  
14 with who we knew to be muscle. We do know that he was there on  
15 some of those occasions. I just did not have any information  
16 whatsoever that he participated or, for lack of a better term,  
17 flexed to anybody that he was here to protect Shulaya or  
18 anything like that.

19 So I just wanted to note that as passively as  
20 possible. I just didn't have that specific information.

21 THE COURT: Let me just ask, is there anything you  
22 would like -- I hear the point. I think that the evidence at  
23 the Shulaya trial appeared to indicate that there were  
24 individuals often who were associated either with the fighting  
25 community or MMA who would be present with Shulaya and that it

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1 may be that the individual, Mr. Makashvili, was not himself  
2 intending to provide muscle, but that there was a presence of  
3 these individuals with this particular skill set in the  
4 vicinity of Mr. Shulaya.

5 MR. DONALDSON: Right.

6 THE COURT: I think that is really the purpose for  
7 which it's being used. There's no indication in the materials  
8 before me that Mr. Makashvili committed or perpetrated any  
9 violence.

10 MR. DONALDSON: Right. I did read the trial, the  
11 2,000 or so pages that were a very entertaining trial. I might  
12 add I did read that just to make sure that didn't happen. So I  
13 agree with the Court. That's, I think, how it was.

14 THE COURT: So do you want me to take the phrase "as  
15 muscle" out?

16 MR. DONALDSON: Yes, I'd prefer that.

17 THE COURT: Mr. Thomas, does the government have any  
18 objection to that?

19 MR. THOMAS: As we communicated to Mr. Donaldson, we  
20 don't have an objection to rewording or omitting that  
21 particular word. I think the point which the Court has already  
22 taken is that Mr. Makashvili formed part of an entourage of  
23 fighters that Mr. Shulaya used to signal his status and  
24 capacity for physical retaliation. The government makes no  
25 allegation that Mr. Makashvili committed any acts of violence

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1 or was, in fact, used in the way in which Mr. Donaldson, I  
2 think, is concerned. But I think the government's position,  
3 and that is reflected by the trial evidence, is that  
4 Mr. Makashvili was one of many who performed a signaling  
5 function.

6 THE COURT: Why don't we see if this works.  
7 Paragraph 9 would be changed to say, "Levan Makashvilli is a  
8 professional MMA fighter and served the Shulaya enterprise,"  
9 insert "as part of Mr. Shulaya's entourage, and as a driver,"  
10 and strike the phrase "as muscle and." So the word "muscle" was  
11 out. He was just there and present.

12 MR. DONALDSON: I'll take that, your Honor. Yes.

13 THE COURT: Mr. Thomas, is that acceptable to you?

14 MR. THOMAS: It is, your Honor.

15 THE COURT: So that will be a change, Chris, which  
16 needs to be noted on a blue card in the PSR for paragraph 9,  
17 and so then probation would then prepare a revised PSR that  
18 would then go onto the docket reflecting the blue card. All  
19 right.

20 Other than that, Mr. Donaldson, do you have any  
21 changes or modifications to the factual statements in the PSR?

22 MR. DONALDSON: I do not, your Honor.

23 THE COURT: Does your client have any additional  
24 changes or modifications to the factual statements in the PSR?

25 MR. DONALDSON: After speaking to him again yesterday,

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1 he does not.

2 THE COURT: Mr. Thomas, does the government have any  
3 additional -- any changes or modifications to the PSR?

4 MR. THOMAS: No, your Honor.

5 THE COURT: The Court then does adopt the factual  
6 statements in the PSR. The PSR will be made part of the record  
7 in this matter and filed under seal. If an appeal is taken,  
8 then counsel on any appeal may have access to the PSR without  
9 any need for further application to the Court.

10 Let's turn to the guidelines. The guidelines in the  
11 PSR are reflected as an offense level of eight and a criminal  
12 history category of I. That is the same as the offense level  
13 and criminal history category that the parties indicated in the  
14 plea agreement. And based upon the information currently  
15 available to me, that appears to be the correct calculation.

16 Does anyone have any comment on the guidelines?  
17 Otherwise, I'll confirm them as eight and I.

18 MR. THOMAS: No comment, your Honor.

19 MR. DONALDSON: No comment, your Honor.

20 THE COURT: So the guidelines are offense level eight,  
21 criminal history category as I.

22 OK, folks. Let's turn to the next portion of the  
23 proceeding, and let me just introduce this very briefly with a  
24 little bit of a further explanation to my order of yesterday  
25 which indicated that I was considering an incarceratory

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1 sentence. Let me tell you why.

2 I am very concerned about the recent arrest of the  
3 defendant, and it appears to indicate to me, particularly since  
4 this was the period of time while he was just weeks away from  
5 sentencing in this matter and after a serious trial that had  
6 already occurred with codefendants and all of the information  
7 that had become known, that that series of events appeared to  
8 indicate a lack of appreciation for the seriousness of the  
9 conduct and a need, frankly, for a sentence that indicated that  
10 the Court took things seriously and that there was a need for  
11 personal deterrence and that a probationary sentence did not  
12 appear to achieve that, given the fact that the defendant's  
13 driving around in a vehicle with stolen plates, with a  
14 suspended license two weeks before he's to be sentenced for a  
15 felony. So that is why I issued the order that I did, and so  
16 you folks should fold that into your comments.

17 But from my perspective, it is a 3553(a)  
18 consideration. Obviously, the conduct, he's not being  
19 sentenced for that other state conduct. It's just a 3553(a)  
20 consideration in terms of the need for personal deterrence and,  
21 really, his personal characteristics. So fold that into  
22 whatever you'd like to say, but that gives you a little bit  
23 more information about why the order that was issued, issued.

24 Mr. Thomas, with that said, why don't you go ahead and  
25 proceed, sir.

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1 MR. THOMAS: Yes, your Honor. I'll start first by  
2 focusing on the defendant's conduct in the charged case. It's  
3 the government's perspective that a sentence within the zero to  
4 six-month range would be appropriate in terms of imprisonment.

5 Mr. Makashvili at the time the case was taken down and  
6 the arrest occurred and some initial presentations were made to  
7 the Court was thought to have been all over a number of  
8 telephones with communications, most notably, to Mr. Shulaya  
9 talking about a range of criminal conduct. In the course of  
10 the investigation that followed even the takedown, what we  
11 discovered is that we had been -- we had mistaken that all of  
12 those phones were Mr. Makashvili's himself. It was, in fact,  
13 the case that Mr. Makashvili had used his name for a number of  
14 telephones that were distributed to a number of fighters, and  
15 so only a portion of the conversations that we had intercepted  
16 were Mr. Makashvili, although the sort of registration  
17 information on a number of those telephones came back to him.

18 That led us to sort of recontextualize Mr. Makashvili  
19 in that where we end up is that Mr. Makashvili really is a  
20 minor person who supports the Shulaya enterprise. He supported  
21 it by providing those telephones. He supported it, as he  
22 explained in his factual allocution, by driving Mr. Shulaya  
23 around, knowing that the purpose of the drives was to enable  
24 Mr. Shulaya to attend to the gambling business and then most  
25 notably, as was focused at the trial, by accompanying Shulaya

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1 and others when he travels west to LA to meet with the LA four,  
2 and it's out in LA that Mr. Makashvili is standing shoulder to  
3 shoulder with Shulaya as part of the entourage to signal that  
4 Mr. Shulaya, from the East Coast, you know, he's an important  
5 person and to be respected on the West Coast in this  
6 conversation with Mr. Kazarian.

7 So from the Court's perspective, perhaps one of the  
8 things to focus on at sentencing is not so much the specific  
9 acts individually that Mr. Makashvili has undertaken, but  
10 rather that he formed part, again, of this enterprise and  
11 signaled that it was something desirable, that it had form and  
12 force, and that Mr. Shulaya was somebody to be respected and  
13 feared. So from the government's perspective, there is at  
14 least a particular general deterrence value.

15 THE COURT: Let me just ask you, in terms of that,  
16 what is the period of time that you understand Mr. Makashvili  
17 functioned as a driver and/or was part of the entourage? And I  
18 ask that in part because -- and you can tell part of that  
19 information from the phones and everything else -- but I want  
20 to get a sense as to whether there were only two instances of  
21 him driving Mr. Shulaya around or whether it was expected that  
22 that there were a number.

23 MR. THOMAS: One moment, your Honor.

24 (Counsel confer)

25 MR. THOMAS: Your Honor, the agents may come forward

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1 and correct me if I'm wrong, but I believe that Mr. Makashvili  
2 is at least spotted and observed starting at the end of 2016.  
3 He has international travel during the spring of 2017 that  
4 removes him from the day-to-day operations, and then he returns  
5 and rejoins the Shulaya enterprise when it heads to California.

6 THE COURT: All right.

7 MR. THOMAS: It extended over a period of months with  
8 a break in which he's overseas.

9 THE COURT: I would say, as you folks know from  
10 paragraph 9 of the PSR, he's present at least as of May 2016,  
11 not just the end of 2016.

12 MR. THOMAS: That's right, your Honor.

13 THE COURT: So it was sometime during 2016, 2017 with  
14 a break where Mr. Makashvili was traveling internationally.

15 MR. THOMAS: That's correct.

16 THE COURT: Then he was arrested in June of 2017.

17 Anything else, Mr. Thomas?

18 MR. THOMAS: Yes. I wanted to comment, if I could,  
19 about the report from Pretrial Services. Since that report  
20 came through, the government has been looking into the  
21 circumstances. And part of the reason why we haven't focused  
22 on that in our sentencing submission or in our remarks now is  
23 that we don't fully yet have context as to what exactly  
24 happened.

25 We could tell the Court and I know Mr. Donaldson has

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1 an explanation as for why Mr. Makashvili happened to be driving  
2 that day, but the plate was stolen. The vehicle appears to be  
3 Mr. Makashvili's vehicle or vehicle that he uses. What we have  
4 learned is that that plate, it appears, was stolen from a  
5 rental car company or off a rental car in Florida a few years  
6 back. Since the time it was stolen, the plate has been in New  
7 York City for a while and used on a series of vehicles, but it  
8 has only been used on the vehicle Mr. Makashvili was stopped in  
9 since July.

10 So I don't know. We don't have an answer yet as to  
11 whether Mr. Makashvili switched out the plates after his  
12 license was suspended or whether there was some other more  
13 nefarious purpose for switching plates on that vehicle, but it  
14 appears that that stolen plate has been around New York City,  
15 it's been on a series of vehicles, and only recently ended up  
16 on Mr. Makashvili's vehicle. That's the point where we arrived  
17 in our investigation.

18 THE COURT: All right. Mr. Donaldson.

19 MR. DONALDSON: Oh, I'm sorry. Normally, I'll come  
20 over here, so I'll come over here.

21 I'll try to be brief, your Honor. I tried to explain  
22 a little bit in my sentencing submission that I would go  
23 backwards starting with the recent, what I gather from the  
24 Court and I understand from the Court's writing last night, is  
25 a very serious matter.

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1 I agree that any arrest is a serious matter. I agree  
2 with that. And I do still do a lot of state court work, so I  
3 appreciate the Court's attention to it. I somewhat disagree  
4 with whether or not it's of the manner or to the level that  
5 would require going from probation, a probationary  
6 consideration, to jail. I'll go to my reasons why, but I think  
7 I'm landing in that lane.

8 The reason is he was, in fact, stopped on August 12,  
9 2018. He did report it to probation, to his officer, the very  
10 next day when he could. So I think that is good on his part.  
11 We should put in context why he was stopped, though. From what  
12 I understand, he was in Brooklyn, and he was going to take his  
13 mother-in-law her medication. She had just fainted, and so she  
14 needed medication. So he did tell me he was trying to get  
15 there. He was trying to get there because his mother had just  
16 fallen and banged her head. She's elderly. He was trying to  
17 get her medication, so he did that. He did, in fact, get the  
18 officers the medication. They did, in fact, rush it over to  
19 the mother-in-law because she was in need of it. That's why he  
20 was stopped. I don't know if he said he ran a stop sign, but  
21 he did acknowledge he was rushing to get there. He did then at  
22 that point find out his license was suspended.

23 Now, to that point, licenses, as the Court may know  
24 and I'm sure the prosecutors know, in New York City, the way  
25 licenses are suspended is that you get a summons; and then if

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1 you don't answer the summons, they send you a suspension letter  
2 to an address or to someplace, and that's their notice that you  
3 are suspended. Now, we've been arguing about that in New York  
4 State court for quite some time about that should not be the  
5 proper notice because sometimes people just don't get their  
6 mail, or whatever. So I don't believe and Mr. Makashvili has  
7 informed me that he did not know his license was suspended,  
8 which is why as soon as he found out, he got it reinstated the  
9 next day or two days later on the 16th, three days later on the  
10 16th. So it's for, I believe, one summons. From what I  
11 understand, one summons that was issued.

12 I told the prosecutors that normally when I have that  
13 situation regarding that or a suspended licenses, I look back  
14 to find out whether or not the person has been stopped or  
15 something in between that, because then I would say, well, if  
16 he knew his license was suspended and you stopped him before,  
17 they would have given him the suspended license then. In this  
18 situation I asked the government, well, I didn't know when the  
19 license plate supposedly got on the car because he got the  
20 summons, and if he got a summons, if he didn't get arrested for  
21 driving with a stolen plate, then that creates a conflict, in  
22 my mind, because if he got a summons, that must mean some  
23 police officers had to have seen the license plate. I don't  
24 know when he got the summons. I thought it was sometime in  
25 June. I need to check that out.

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1           The government has now told me, based upon their  
2 investigation, and told the Court that the license plate was  
3 stolen from Florida, or wherever it was stolen from, a year and  
4 a half ago. So we know Mr. Makashvili didn't steal a license  
5 plate. That's not the case. We know that. The question is  
6 whether or not he knew he had a stolen license plate on his  
7 vehicle. I don't believe he knew that either. I say that  
8 because I've seen him drive the vehicle, and like I told the  
9 government, unless he's plumb crazy to have a federal case and  
10 drive his vehicle up to the federal courthouse knowing he has a  
11 stolen plate on it. That would be kind of silly. And I think  
12 common sense dictates that that means, in my mind, he didn't  
13 know it was stolen. Not saying that it wasn't stolen, not  
14 saying he shouldn't have had it on there. I grant all that.  
15 But when I think about what the Court said, whether or not he's  
16 not taking the Court seriously, taking this case seriously  
17 enough to get arrested prior to -- two weeks prior to  
18 sentencing, I just don't think, in my mind, that he knew -- no  
19 one knows they're going to be arrested; two, I don't know that  
20 he knew his license was suspended, nor do I think he knew he  
21 had a stolen license plate.

22           So, in my opinion, I'm hoping that the Court doesn't  
23 believe that he was driving around with that knowledge two  
24 weeks before sentencing because he didn't care about that.  
25 That's not the case. I just don't think he knew about those

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1 issues, and that's why it got resolved so quickly.

2 THE COURT: Why would he have taken his license plate  
3 off of his vehicle if he didn't know that his license had been  
4 suspended? In other words, we know that there was a plate on  
5 his vehicle that was there when his license was suspended. We  
6 know that there is another plate on the vehicle within two  
7 months.

8 MR. DONALDSON: Well, license plates --

9 THE COURT: People don't walk around swapping out  
10 their plates --

11 MR. DONALDSON: I agree.

12 THE COURT: -- every day.

13 MR. DONALDSON: I agree with that to a point. I mean,  
14 we can have --

15 THE COURT: Most people.

16 MR. DONALDSON: We can have a discussion about this  
17 probably off the record so I won't get myself in trouble. But,  
18 yeah, I don't know if that's exactly true, Judge, with all due  
19 respect. Secondly, license plates and suspended license don't  
20 go hand in hand. You don't take off the license plate to  
21 prevent yourself from getting -- you don't put a stolen license  
22 plate on a car to prevent the police department from knowing  
23 that you have a suspended license.

24 THE COURT: No, I agree with that, but I'll --

25 MR. DONALDSON: That would not make any sense. I

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1 don't think he swapped the license plate out so that the police  
2 department wouldn't know he has a suspended license. That  
3 would make -- that just would be nonsensical.

4 THE COURT: Let's put it this way: There are  
5 circumstances under which this gentleman put a license plate  
6 that did not belong to him, and presumably since it was a  
7 license plate from a rental car company in Florida, that it had  
8 an uncertain provenance that he put onto a vehicle that he  
9 drove.

10 MR. DONALDSON: I think I will agree with the -- we  
11 have to make some assumptions. I'm going to just assume for  
12 record purposes that he put the license plate on there. I'm  
13 going to assume for record purposes that -- well, it was a  
14 Florida plate, but I just cannot and I cannot make the leap  
15 that he put, knowingly put, a stolen license plate on his car  
16 and drove around. We just don't, in my experience, hold out  
17 knowingly stolen goods. Normally when you know something is  
18 stolen, it's something that you can secret.

19 THE COURT: You normally don't put somebody else's --  
20 this is a Florida plate.

21 MR. DONALDSON: I agree with that.

22 THE COURT: It's not like a New York plate.

23 MR. DONALDSON: I'm not disagreeing with that part. I  
24 think the part about putting a Florida plate on your car is  
25 outright stupid, with all due respect to my client, but I just

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1 don't and I'm not and I can't based, on my conversations with  
2 him and with his manager, who is his wife, go so far as saying  
3 that he knew that the car -- that the plate was stolen. I  
4 think that's where we separate. I do think he made a colossal,  
5 colossally -- is that a good word? That's a bad word -- a very  
6 large, dumb decision regarding putting a license plate on his  
7 car. I do not think he put the license plate on the car  
8 knowing that the license plate was stolen. That part I know he  
9 didn't do. So that's that.

10 But to that point, and I don't know that he did that,  
11 saying that -- I don't know. I'm sure he didn't do that saying  
12 that he doesn't appreciate the seriousness of the case. For  
13 the last 14 months, he's expressed to me the seriousness of the  
14 case and how much trouble he's in, and he's looking at jail  
15 time and the Court can sentence anywhere from zero to five, at  
16 that point zero to 20 years. I don't want the Court to believe  
17 or to think for one second --

18 THE COURT: Zero to five years.

19 MR. DONALDSON: Well, what I'm saying is, no, before  
20 we negotiated this great plea, before that it was much more  
21 than that.

22 THE COURT: Yes.

23 MR. DONALDSON: So he appreciated the seriousness of  
24 the case for quite some time. He appreciated the seriousness  
25 of the case after we took the plea. At that point, he's been

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1 appreciating it since that time. We talk a lot. So I cannot  
2 emphasize the fact that he does appreciate how serious the  
3 matter is and in no uncertain terms because of the consequences  
4 that follow from it and what can happen to him related to his  
5 personal and professional experience. Unlike, I think, anyone  
6 else, you know, he -- when I say he has been actively and  
7 begging me almost every week how he could get back fighting,  
8 because that's all he knows, and he knows that this is going to  
9 play a large part in doing that. So that's why I'm saying I  
10 cannot imagine he would be doing anything that would  
11 intentionally try to mess that up. That just is the farthest  
12 thing from his mind.

13 So this, what happened the last two weeks, I don't  
14 think was because he has no respect for the process or he  
15 doesn't know how serious it is, but I think it's more one of,  
16 maybe even before that, several pretty poor decisions, not  
17 anything criminal in mind, but just a significantly poor  
18 decision that I don't think should result in a consideration  
19 from probation for jail time.

20 As far as the 3553 factors, I agree it does go towards  
21 that. The Court should use all that it should regarding  
22 Mr. Makashvili's character, etc., regarding the sentence, but I  
23 think to that end, 3553 and its analysis weighs heavily, I  
24 mean, I think very heavily towards a non-incarceratory  
25 sentence. If I could have an opportunity, I'll just say

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1 briefly why.

2 I looked at the PSR pretty carefully, and what I was  
3 struck by was page 23 where it talks about voluntary surrender.  
4 One of the things that I like noting is what other people think  
5 and, of course, the courts think about why people should get  
6 sentenced. Here, the last sentence where it states that  
7 Mr. Makashvili is not viewed as a flight risk or a danger to  
8 the community, why is that important? It's important because  
9 the probation department believes, of course that he's not a  
10 flight risk, but more importantly they believe he's not a  
11 danger to the community. Why is that important to me? Because  
12 I firmly believe that jail, prison, any type of custodial  
13 process should be reserved for those persons that are, in fact,  
14 somehow dangerous to the community or could be or was or  
15 committed some act that we believe, as a society, he should be  
16 taken from society for a while. Mr. Makashvili simply does not  
17 present that in any way, shape, or form.

18 I also would like to, if I can, look at page 20 of the  
19 PSR. Page 20 where the probation department indicates, and  
20 I'll read for the record: "Based upon Mr. Makashvili's  
21 first-time offender status and minor role in the offense, we  
22 view a custodial sentence as unnecessary and believe a sentence  
23 of probation sufficiently addresses the sentencing factors set  
24 forth in 18 U.S.C. 3553, most significantly, just punishment."

25 I agree wholeheartedly with that. Why do I agree

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1 wholeheartedly with that? For the reasons set forth in my  
2 sentencing memorandum. One second.

3 For example, as indicated, Mr. Makashvili was not a  
4 leader, organizer, supervisor, or manager of this conspiracy.  
5 He was considered a minor participant. He is not alleged to  
6 have committed any violence related to or in furtherance of  
7 this federal conduct. This was his first contact of any kind  
8 with law enforcement. He does not have a significant role in  
9 this conspiracy. He has maintained gainful employment,  
10 significantly provides for his two children, has family support  
11 and community support. Outside this criminal conduct, he's  
12 maintained a structured, productive life. Why do I say  
13 structured, productive? Because as we know and as the Court  
14 knows doing a lot of sentencing proceedings, we look to that to  
15 find out whether or not there's going to be some kind of  
16 recidivism. If the person does not have a structured,  
17 productive life, normally they go out and do other things. In  
18 this situation, he is a very structured, productive,  
19 disciplined person, unlike probably many other people I've  
20 seen.

21 He did not earn any significant income for his  
22 criminal conduct. Of course, that's not an element, that's not  
23 what the government has to prove, but it is something that  
24 courts look at. For example, if he had earned \$500,000 or  
25 \$100,000, or whatever the case may be, then we would be saying,

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1 well, he earned this amount of money, so we know he profited,  
2 and therefore, that goes towards sentence. He didn't do that  
3 here, and that's not the case. Quite frankly, he didn't earn a  
4 penny, from what I understand.

5 Mr. Makashvili has already lost significant economic  
6 opportunity and future earnings as a result of this criminal  
7 conduct. Why is that important? When he first got arrested  
8 last year in June, I believe in August he was scheduled or  
9 September he was scheduled for a world championship fight in  
10 Georgia or Russia, I believe, where that fight would have  
11 catapulted him to the world championship fight. Of course,  
12 because of his conduct, I'm not saying anyone else, because of  
13 his conduct, he was not able to do that. Subsequent to that,  
14 several other contracts came through for Mr. Makashvili from  
15 the fight and other fights where he could have continued his  
16 ascension up the ranks. Couldn't do those either.

17 So I think the Court talked about this when we tried  
18 to get -- ask him to be allowed to travel. It was important to  
19 note that fighters, athletes, have shelf lives. I know that.  
20 I was a former athlete. We got shelf lives. Got to take the  
21 opportunity when it comes because if it doesn't, you will miss  
22 it. His shelf life is about over, almost over. So he's missed  
23 out on three or four championship-caliber fights. I believe  
24 he's scheduled for another one in October, this October, of  
25 course if he's out and can travel. So he has given up a lot,

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1 and he has been punished a lot. So we must look at every  
2 defendant individually about how they are and how the crime  
3 impacts them individually. In this individual's situation, his  
4 collateral consequences are significant.

5 We talked about and the Court noted how long he was  
6 involved, May 2016, but it was intermittent, as I like to say,  
7 May 2016, again a little later than that, then not too much and  
8 then again at the end part of it. That's important, I think,  
9 because it wasn't a consistent strand or continuity of  
10 involvement.

11 Finally, it's important to note that Mr. Makashvili is  
12 subject to deportation. That's probably one of the most  
13 important aspects of it. You know, it is a zero to five  
14 maximum. Normally, I'm saying normally, deportation may not  
15 happen, but it may. He has been advised that it may very well  
16 happen because of the circumstances and the atmosphere that  
17 we're in right now. He may very well be deported. He's aware  
18 of that. He was aware of that before he took the plea, so  
19 that's important as well.

20 So for those reasons, we sincerely believe that he is  
21 not a danger to the community. He is not someone that I  
22 believe should be sentenced to incarceration, notwithstanding  
23 this last hiccup, whether or not this lack most recent contact  
24 elevates him from probation to, say, I don't know, house arrest  
25 plus probation, I don't know, but I really do not believe that

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1 all criminal conduct should result in jail. I just don't  
2 believe that. I don't believe that every person that's  
3 convicted of a crime should go to jail. I don't believe that.  
4 I don't believe Congress believes that. I don't believe that  
5 certain state legislators believe that. In fact, since  
6 Congress said zero to five, that must mean that there is a  
7 circumstance where a person that's charged and convicted of  
8 this particular crime, Congress believes that they can get  
9 zero. I can't imagine how a person like Mr. Makashvili, who's  
10 a first offender, nonviolent, minor participant, working,  
11 structured, family man, focused, disciplined, etc., is not the  
12 type of person that Congress thought, when convicted of this  
13 crime, can't get zero. I don't know what other factor that  
14 would be used to promote a zero other than that.

15 So for those reasons, I think that Mr. Makashvili is a  
16 prime candidate for a non-incarceratory sentence. I agree that  
17 the recent contact with law enforcement should cause us pause.  
18 I agree that Mr. Makashvili should resolve that matter and  
19 should receive, I guess, something more than saying don't do  
20 it, but I do not believe it should warrant any type of  
21 incarceration. The guidelines is zero to six months. A  
22 probationary term falls squarely within that, and I think  
23 that's the appropriate and just sentence for Mr. Makashvili.

24 If the Court has any questions for me -- oh, last  
25 thing. Your Honor doesn't know this, but I do quote your Honor

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1 quite often in my sentencing submissions, and you said to me  
2 one time a long time ago in a case that a client was facing  
3 prison time, and I believe the words were: Mr. Donaldson,  
4 sometimes a person would rather have some jail time than face  
5 the collateral consequences of having a felony conviction.  
6 They would rather trade that sometimes, and I agree with that.  
7 Sometimes if I can have -- if it was up to me and I had the  
8 choice between taking a two, three months in jail or having a  
9 lifelong stigma of a felony conviction where I can't do  
10 anything with it, I might take that jail rather than those  
11 collateral consequences. In this situation, it might be the  
12 opposite. I can't imagine how jail for Mr. Makashvili would  
13 serve any purpose, any purpose at all, except that it would  
14 fill a jail cell for a little while and, two, it will prevent  
15 him from securing that possible championship belt that will  
16 provide some kind of economic resource for his family for the  
17 rest of their life. Other than that, respectfully, I don't  
18 know what a jail sentence would do.

19 Personal deterrence, the collateral consequences that  
20 he's faced and will continue to face, I think, will serve as a  
21 significant personal deterrence, in my humble opinion.

22 With that, I'll stand down. If the Court has any  
23 questions, I'll be happy to answer them.

24 THE COURT: All right. Thank you, Mr. Donaldson. I  
25 don't have any additional questions at the moment.

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1           Mr. Makashvili, would you like to address the Court  
2 before sentence is imposed?

3           THE DEFENDANT: (In English) I want to just say sorry.

4           THE COURT: OK. Thank you. Thank you.

5           Anything else that you would like to say? There's no  
6 obligation to speak. I just invite you to speak. You're  
7 always entitled to speak and have a right to speak.

8           THE DEFENDANT: (In English) I want to say something.  
9 I love this country. When I left my -- I don't know. I want  
10 to say sorry, you know.

11          THE COURT: All right. Thank you. Thank you.

12          Let me describe how I reach a sentencing  
13 determination. Here, even though this particular crime does  
14 not carry high guidelines, I am required to reference the  
15 guidelines in any event, and I have reviewed the guidelines  
16 here and am mindful of them.

17          The guidelines here for an offense level of eight and  
18 a criminal history category of I are zero to six months. I  
19 note that in particular because there is an error in the  
20 probation report where there's an indication on page 19 that  
21 the guidelines are zero to eight months, and they're not. They  
22 are zero to six months, and that's on page 19. The guidelines  
23 are correctly referenced in the plea agreement, and I think we  
24 have all been assuming and working along the lines of a  
25 guidelines range of zero to six months.

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1           In all events, the guidelines are advisory only. What  
2 I have to do for every individual is to determine whether the  
3 guidelines suggest a reasonable range and also as part of my  
4 review of the guidelines to look at different ways in which  
5 sentences may be structured and to be certain that I've taken  
6 into consideration all of the various possibilities of types of  
7 sentences that could achieve the various sentencing purposes  
8 set forth in 3553(a).

9           For every defendant, including you, Mr. Makashvili,  
10 what the Court does is the Court tries to determine and seeks  
11 to determine what is a sufficient, but not greater than  
12 necessary, sentence for you for the crime of conviction. Here,  
13 the crime of conviction is a crime which is, in large part,  
14 about being a facilitator of others, here through driving  
15 and/or accompanying an individual, Mr. Shulaya here, who was --  
16 that other individual engaged in far more serious criminal  
17 conduct. There's no doubt, Mr. Shulaya has been tried and  
18 convicted of some very serious crimes, that Mr. Shulaya was  
19 involved in a whole array of criminal behavior. One type of  
20 behavior that he was involved in had to do with illegal  
21 gambling, and the crime of conviction here for you,  
22 Mr. Makashvili, is some form of involvement with that.

23           Now, your guidelines are very low because your level  
24 and the nature and the type of involvement is far less than it  
25 is for others. So I take into account the fact that what the

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1 crime of conviction is here, it's a serious crime, but it's not  
2 nearly as egregious in terms of the type of crime, the nature  
3 of the crime, the nature of the conduct, as others who are  
4 involved somehow in some way with the Shulaya enterprise.  
5 Nevertheless, every individual who is involved with the  
6 enterprise, including yourself, was facilitating it in some  
7 way. It's important not to overstate an individual's  
8 contribution to that facilitation and to keep in mind what they  
9 were and what they were not doing, and I do that for you here.

10 I do acknowledge that you are a first-time offender, a  
11 nonviolent offender, that you were not a leader. All of those  
12 things are already taken into account with the guidelines. One  
13 issue that I have currently with what probation has been doing  
14 very recently is probation has been, on the one hand,  
15 exercising discretion in their recommendations, which I  
16 applaud; on the other hand, they have been doing it in a manner  
17 that I think needs to be adjusted. They have been justifying  
18 variances, as they did here, that are based upon the very same  
19 factors that are already embedded into the guidelines. So in  
20 other words, here, nonviolent offender, that's already  
21 considered in the guidelines. First-time offender, already  
22 considered in the guidelines. Type of conduct, already  
23 considered in the guidelines.

24 What would be more helpful to the Court would be how  
25 and why, understanding all of those things and having a

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1 guidelines range suggestive of a particular possible sentence  
2 or different ways in which a sentence could be structured, why  
3 a defendant should, nonetheless, get a variance. There is a  
4 possibility with the guidelines of there being zero, and so  
5 it's not actually so much of a variance as suggestive that this  
6 defendant fits at the very lowest end of that. But I don't  
7 have much to go on from what probation said other than what's  
8 already embedded in the guidelines.

9 At the end of the day, it's neither here nor there,  
10 ultimately, because I always reference what probation has done.  
11 I think about it, but I decide myself what should be done. I  
12 am most concerned here with Mr. Makashvili's, what I would  
13 call, involvement in the vicinity of illegal activity in ways  
14 that are not perhaps totally understood, but he has been  
15 involving himself over time with Mr. Shulaya. It was  
16 intermittent, Mr. Donaldson, as you have said, but that itself  
17 is concerning because it suggests that he was involved, he  
18 stopped, he went back to it when he came back after his foreign  
19 travel. So it was intermittent but demonstrating a willingness  
20 to go back to it.

21 It is hard for the Court to believe, and indeed I do  
22 not believe, that anybody could have been a driver for  
23 Mr. Shulaya and not understood that there was a whole host of  
24 illegal activity happening because, indeed, it appears that  
25 Mr. Shulaya's entire existence was involved in a -- touching a

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1 variety of types of illegal activity, including the gambling.  
2 So getting anywhere near it, given the concerns with a career  
3 and how a deprivation of liberty could impact Mr. Makashvili's  
4 career, how that all could play out, is concerning.

5 So I have the conduct; then I have an individual who  
6 committed the conduct in a way that was knowing; and in terms  
7 of what he, Mr. Makashvili, was doing, that was persistent over  
8 at least some period of time and was supportive and,  
9 ultimately, facilitated illegal conduct.

10 So that brings me to who he is. And I do acknowledge  
11 that he is an individual who makes his living through athletic  
12 endeavors, and there's a limited shelf life, as Mr. Donaldson  
13 has said; that he is a family man, and that's reflected in the  
14 PSR; and that there are many, many individuals who have far  
15 less going for them than Mr. Makashvili.

16 However, I am concerned. I'm very concerned by what  
17 occurred in August of 2018 after Mr. Makashvili was able to  
18 obtain what is an extraordinarily favorable plea agreement that  
19 caps his potential exposure in the way it does and has a  
20 guidelines level as low as it is to have been involved again in  
21 the vicinity of some form of unlawful activity, which is  
22 obtaining a plate from who knows where, but it's a Florida  
23 plate, putting it on a vehicle. This is the kind of thing that  
24 really concerns me. There are a number of inferences that  
25 could be drawn from it, but what I am concerned with is that

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1 Mr. Makashvili has not until now fully taken on board the  
2 serious consequences that flow from engagement in unlawful  
3 behavior and that there is a need for some sentence, albeit a  
4 limited sentence, that will serve the purpose of personal  
5 deterrence.

6 As you folks know, what the Court does is it tries to  
7 determine for every sentence whether any personal deterrent  
8 effect is needed, personal deterrence, general deterrence; what  
9 kind of sentence will promote respect for the law; what kind of  
10 sentence will be a just sentence; whether there are any  
11 educational, vocational, correctional, or other treatment that  
12 is suggested by a particular sentence; and, of course, taking  
13 into account any mitigating factors. So it is my view that the  
14 most recent series of events that occurred in August of 2018  
15 demonstrate a need for personal deterrence, and it is for that  
16 reason that the sentence that I will impose today will be a  
17 sentence that both acknowledges the seriousness of the crime,  
18 the duration of the conduct, the fact that it was returned to  
19 intermittently but demonstrating a willingness and desire to  
20 return into that universe, and will be therefore a just  
21 sentence reflecting all of the necessary sentencing purposes.

22 So under all of the factors of 3553(a), it is my  
23 determination that the defendant should be sentenced to a  
24 period of incarceration of six months. I will allow him to  
25 self-surrender. So we'll talk about that in a moment.

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1           In addition to that, he will be on supervised release  
2 for a period of three years. That period of supervised release  
3 will allow probation to monitor the defendant, his movements  
4 here in the United States, should he be allowed to remain in  
5 the United States, and to ensure that he both seeks full-time  
6 employment and otherwise stays on the right side of the law.

7           There will be certain terms and conditions associated  
8 with the period of supervised release, which I'll go through  
9 right now. There will be some standard conditions and there  
10 will be the following mandatory conditions:

11           You shall cooperate in the collection of DNA.

12           You shall not possess a firearm or other destructive  
13 device.

14           You shall not commit another federal, state, or local  
15 crime.

16           You shall not illegally possess a controlled  
17 substance, and you shall be tested randomly at least two times  
18 to determine whether or not you are using a controlled  
19 substance. If you are, then you shall be tested more  
20 frequently thereafter.

21           You shall submit your person, residence, place of  
22 business, vehicle, and any premises otherwise under your  
23 control or in which you are living to reasonable searches as  
24 reasonably requested by probation.

25           You are to seek and maintain full-time employment

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1 should you have a visa status that allows you to do so.

2 You shall obey all immigration laws and directives of  
3 the U.S. immigration authorities.

4 You shall report to the nearest probation office  
5 within 72 hours of your release from custody.

6 And you shall be supervised in your district of  
7 residence.

8 There will be a \$100 mandatory special assessment  
9 which I impose and do impose.

10 I don't find that you have sufficient resources to pay  
11 a fine, and so I am not going to impose a fine.

12 And there's no provision for forfeiture or restitution  
13 here, so those are not imposed.

14 Is there any legal or other reason why sentence should  
15 not be imposed as stated?

16 MR. THOMAS: Not to the government's knowledge, your  
17 Honor.

18 THE COURT: Mr. Donaldson?

19 MR. DONALDSON: No, your Honor.

20 THE COURT: The Court does impose sentence as stated.  
21 I'll get to the other applications in just a moment, but let me  
22 make sure I sort of close this out.

23 Are there any open counts?

24 MR. THOMAS: There's an underlying indictment. The  
25 government moves to dismiss it.

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1 THE COURT: The Court does dismiss the underlying  
2 indictment.

3 Now, during your plea, Mr. Makashvili, you gave up a  
4 number of appeal rights, but it's not the Court's place to tell  
5 you whether or not you have any appeal rights. It is my duty  
6 to tell you that should you want to file an appeal, you must  
7 file any notice of appeal within 14 days of the filing of the  
8 judgment of conviction. If you cannot afford the cost of  
9 appeal, you can apply to have those costs waived. That's  
10 called proceeding *in forma pauperis*, and you have a right to  
11 apply to proceed in that manner.

12 Now, I did say that I will allow the defendant to  
13 self-surrender. I say that with some concern because I think  
14 there is a possibility of flight given that, previous to today,  
15 he was not aware and perhaps not even counting on any kind of  
16 incarceratory sentence, and so his incentives for flight may be  
17 altered at this point in time. But at this point I don't *sua*  
18 *sponte*, unless the government has an application, feel the need  
19 to do anything differently.

20 Let me ask the government, do you have any view that  
21 the defendant should not be allowed to self-surrender?

22 MR. THOMAS: No, your Honor. The government's fine  
23 with probation's recommendation.

24 THE COURT: So we will allow the defendant to  
25 self-surrender. What I typically do is I usually,

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1 Mr. Donaldson, allow self-surrender for a period anywhere up to  
2 six weeks. We can do the maximum time, which would be six  
3 weeks from now, or we can do something sooner to get the  
4 sentence underway. What would you prefer?

5 MR. DONALDSON: I would prefer six weeks, your Honor.

6 THE COURT: So the date for self-surrender shall be  
7 October 5, 2018. The defendant shall surrender to the custody  
8 of the U.S. marshals here in this building if a facility has  
9 not already been designated for him. Because of the shortness  
10 of the sentence, it may be that the defendant will remain in  
11 the New York City area and/or over at one of the facilities  
12 nearby, so he may not be designated any place. But in all  
13 events, by October 5, 2018 -- did I say 11 a.m.?

14 MR. DONALDSON: You did not.

15 THE COURT: At 11 a.m. he should surrender to the  
16 marshals in this building or to his facility.

17 Now, are there any other applications? Mr. Donaldson,  
18 I think you had something.

19 MR. DONALDSON: No, I did not, your Honor. I was  
20 going to talk about the voluntary surrender. I presume there  
21 is no conceivable way at this point I can convince the Court to  
22 reconsider that six months and go to three months?

23 THE COURT: I believe that six months is a sufficient,  
24 but not greater than necessary, sentence for this defendant  
25 given the series of events to adequately ensure personal

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1 deterrence, and that is the primary reason for my coming up  
2 with an incarceratory sentence and a sentence of that duration.  
3 So I guess the answer is no.

4 All right. If there's nothing further, then we are  
5 adjourned. Thank you.

6 (Adjourned)